

1. An error in the solicitation documents, including its terms, conditions, or specifications that unnecessarily restricted competition for the public contract;
2. The price, quality, or performance presented by the lowest or best responsible bidder or proposer is, in the City's opinion, too costly or of insufficient quality to justify acceptance of the bid or proposal. This criterion may be satisfied by evidence that the same goods or services can be obtained otherwise for less cost;
3. Misconduct, error, or ambiguous or misleading provisions in the solicitation documents or process threaten the fairness and integrity of the competitive process; or
4. Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the solicitation documents.

30.135 Protests of Notice of Intent to Award

A. Purpose.

Adversely affected or aggrieved bidders or proposers must exhaust all avenues of administrative review and relief before seeking judicial review of and decision by the City under the Public Contracting Code or these rules.

~~B. Notice of Intent to Award.~~

~~The written notice of award of the contract shall constitute a final decision by the City to award the contract if no written protest of the notice of award is filed with the City within seven calendar days of the notice of award or such other period as provided in the City's solicitation. If a protest is timely filed, the notice of award is a final decision of the City upon issuance of a written decision denying the protest and affirming the award. The notice of award and any written decision on a protest shall be sent to every bidder or proposer who provided an address.~~

B.C. Right to Protest.

Any actual bidder or proposer who is adversely affected by the City's notice of intent to award of the contract to another bidder or proposer on the same solicitation shall have seven (7) calendar days ~~after~~after the notice of intent to award has been issued by the City to submit to the City Manager a written protest of the notice of intent to award. A protest of an award that is consistent with a notice of intent to award may be submitted only if a protest of the intent to award has been filed. The written protest shall specify

the grounds upon which the protest is based. In order to be adversely affected, a bidder or proposer must claim that it is eligible for award of the contract as the lowest responsible bidder or best proposer and must be next in line for award; i.e., the protester must claim that all lower bidders or better proposers are ineligible for award because they are non-responsive or non-responsible. The City shall not entertain a protest submitted after the time period established in this rule.

CD. Authority to Resolve Protests.

The City Manager, or designee, shall have the authority to settle or resolve a written protest submitted under ~~section E~~ of this rule.

DE. Decision.

If the protest is not settled or resolved by mutual agreement, the City Manager, or designee, shall promptly issue a written opinion to the protestor on the protest. ~~If the opinion denies the protest, judicial review of this decision will be available if provided for by statute.~~ If the City Manager or designee determines that there is good cause for the protest, the matter shall be submitted to the BoardLCRB for further action. The decision of the BoardLCRB on a protest shall be final. Both the protestor and the person to whom the contract was awarded shall have a right to present arguments to the BoardLCRB. If the opinion denies the protest, judicial review of this decision will be available if provided for by statute.

30.140 Protests Other Than Notice of Intent to Award

A. A protest may be filed to contest the adoption or amendment of these rules, adoption of a class or contract specific exemption, solicitation documents (including specifications and contract terms), ~~a notice of intent to award,~~ or the process used in the solicitation. The protest must be filed with the City within seven (7) days of the adoption or amendment of rules or exemptions, the publication of solicitation documents, or other action being protested. Grounds for protest are limited to:

1. That the City acted contrary to law;
2. That the City's actions unnecessarily restrict competition;
3. The City has failed to follow these rules or mandatory provisions of solicitation documents, or
- ~~34.~~ 4. That the City has improperly specified a brand name.

B. The protest must include:

1. Sufficient information to identify the solicitation;

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2. The grounds for the protest;
 3. Evidence or supporting information; and
 4. The relief sought.
- C. The City Manager shall, if possible, issue a written decision on the protest under this section at least three (3) days before any bid or proposal opening that could be affected by the protest.
- D. A bidder or proposer who does not protest a proposed contract term included in the solicitation documents must accept the contract term as included in the solicitation documents.
- E. If protest of a solicitation is timely received, the opening date may be extended if necessary to allow consideration for the protest and issuance of any addenda to the solicitation documents.
- F. Envelopes containing protests of solicitation specifications shall be marked as follows:

*Specification Protest
Bid or Proposal Number or Other Identification*

30.145 Negotiation

A. Negotiation with Bidders

If a project is competitively bid and all responsive bids from responsible bidders exceed the City's cost estimate, the City may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project within the agency's cost estimate.

1. A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal.
2. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

3. The City will declare that negotiations may occur in the solicitation documents.

B. Negotiation with Proposers

The City may negotiate with proposers after proposal opening in order to try to reach the best possible contract for the City. Proposals may be revised in the course of negotiations for the best offer, provided that any revision is not so extensive as to be unfair to other proposers who do not have the opportunity to negotiate.

30.150 Bidder Disqualification

A. Definitions. As used in this rule:

1. "Disqualification" means the debarment, exclusion or suspension of a person from right to submit bids or proposals in response to the City's solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded or suspended, is disqualified.
2. "Person" means an individual, partnership, or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation which is disqualified may not re-form the business entity as a way of avoiding the disqualification.

B. Grounds for bid-specific disqualification include:

1. The person does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;
2. The person does not have equipment available to perform the contract;
3. The person does not have key personnel available of sufficient experience to perform the contract; or
4. The person has repeatedly breached contractual obligations to public and private contracting agencies.
5. The person has discriminated against a subcontractor because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.
6. The person has engaged in conduct prohibited by ORS 200.075, including:

- a. If the person has entered into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;
- b. If the person exercises management and decision making control over the internal operations, as defined by ORS 200.075(1)(b), of any certified disadvantaged, minority, women or emerging small business enterprise;
- c. If the person uses a disadvantaged, minority, women or emerging small business enterprise to perform contracting services or provide supplies under a public improvement contract to meet an established DBE/MBE/WBE/ESB goal, when the enterprise does not perform a commercially useful function, as define by ORS 200.075(3), in performing its obligations under the contract.

C. Debarment

A prospective bidder or proposer may be debarred from consideration for a contract award for a period of up to three (3) years if convicted of a criminal offense relating to a public contract; convicted of a crime involving dishonesty (as provided in ORS 279B.130(2)(b)), convicted under antitrust statutes, has violated a contract that provides for debarment, or has failed to carry workers compensation or unemployment insurance.

Debarment shall be by written decision explaining the reasons for the debarment and explaining appeal rights. Appeals shall be as provided in ORS 279B.425. Any appeal must be filed with the City within three (3) business days after receipt of the notice of debarment.

D. Investigation.

The City may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply information promptly as requested by the City, such failure is grounds for disqualification.

E. Notice of Disqualification.

The bidder or prospective bidder will be notified in writing by personal service or certified mail of the City's decision to disqualify the person from bidding with the City. The notice shall contain:

1. The effective date of the disqualification and the effective period of disqualification;
2. The grounds for disqualification from bidding; and
3. A statement of the contractor's appeal rights and applicable appeal deadlines.

F. Appeal of Disqualification.

If a contractor wishes to appeal the City's decision to disqualify, the contractor must notify the City in writing within three (3) business days after receipt of the notification. The City shall mail its notice to the contractor by Certified Mail Return Receipt Requested, if not personally served. Appeals shall be conducted under the procedures and standards of ORS 279C.445 and 279C.450. A protest of a denial, revocation, or revision of a prequalification shall be filed within three (3) business days after receipt of notice of the decision. On receipt of the protest, a hearing shall be set before the Board and the hearing shall be held and the decision issued within thirty 30 days of receipt of the protest. The Board will consider the action *de novo*, based on applicable standards. If the denial is upheld, the person filing the protest shall reimburse the City for costs of processing the protest.

30.155 Cancellation of Invitations to Bid or Requests for Proposals

A. Cancellation in the Public Interest

An invitation to bid or request for proposal may be canceled, in whole or in part, and all bids received may be rejected when it is in the public interest as determined by the City. The reasons therefore shall be made part of the file.

B. Notice of Cancellation.

When an invitation to bid or request for proposal is canceled prior to the submission deadline, notice of cancellation shall be sent to all known holders of the documents. When an invitation to bid or request for proposals is canceled after deadline for submission, notice shall be sent to those who submitted a bid or proposal. The notice of cancellation shall:

1. Identify the specification documents;
2. Briefly explain the reason for cancellation; and
3. Where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

30.160 Disposition of Bids or Proposals in Event of Cancellation

A. Prior to Bid Opening.

When an invitation for bids or request for proposals is canceled prior to opening of the bids or proposals, all submissions will be returned unopened, if submitted with a clearly visible return address. If there is no return address on the envelope, the submissions will be opened to determine the source and then returned to sender.

B. After Opening.

When all bids or proposals are rejected, those received shall be retained and become part of the City's permanent file.

30.165 Documentation of Award

A. Basis of Award

Following award, a record showing the basis for determining the successful bidder shall be made a part of the file.

B. Contents of Award Record.

The record shall consist of:

1. Completed bid tabulation sheet; or
2. Completed proposal evaluations; and
3. Written justification of any rejection of lower bids; or
4. Written explanation for any rejection of proposals for failing to meet mandatory requirements of the Request for Proposals.

30.170 Foreign Contractor

If the amount of the contract exceeds \$10,000 and the contract was awarded to a "nonresident bidder", the contractor shall promptly report to the Oregon Department of Revenue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the contract. For the purposes of this rule, a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon.

30.175 Contract Terms and Conditions

A. Required Terms and Conditions

The City shall establish standard terms and conditions for contracts and standard form contracts for classes of contracts. The standard form contract shall be used unless the City determines that an alternative form is acceptable under the circumstances and prepares written finding justifying the use of a different contract form. Contracts shall include provisions relating to the following, if applicable. For those provisions referring to statutes, the contract language shall comply with and implement the statutes.

1. Payment of laborers and material suppliers; contributions to Industrial Accident Fund; liens and withholding taxes, and drug testing (ORS 279B.220, 279C.505);
2. Payment of claims by public officers, payments to first tier subcontractors and claims by labor and materials suppliers (ORS 279C.515),
3. Hours of labor (ORS 279B.020, 279B.235, 279C.520, 279C.540);
4. Environmental and natural resources regulations (279B.525);
5. Payment for medical care, compliance with or exemption from workers compensation laws (ORS 279B.230, 279C.530);
6. Prevailing wage rates (ORS 279C.830);
7. Salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris (ORS 279B.225, 270C.510);
8. Certification by contractor of compliance with the Oregon tax laws according to ORS 305.385.
9. Certification by contractor of nondiscrimination as to relations with subcontractors (ORS 279A.110).
10. Inclusion of provisions in contracts with subcontractors, as required by ORS 279C.580;
11. Progress payments and retainage;
12. Bonding requirements (performance and payment bonds, and bond required to be filed with the Construction Contractor's Board or BOLI); and

13. Any other requirement imposed by federal or state law, regulation, rule or ordinance, which is applicable to the contract.

14. Maximum payment amounts and payment terms, including withholding of retainage.

15. If a public works project is over \$100,000, the contractor will have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.836. If the subcontract is over \$100,000, the contractor will include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project.

16. Recycled materials preference language as required in Section 90.015.

(Section 30.175 (A.) was amended by Resolution No. 3467, adopted on May 18, 2009.)

B. The City may develop and require contract provisions relating to the following:

1. Termination of the contract;
2. Suspension of the work;
3. Labor and materials liens;
4. Liability in absence of bond;
5. Use of recovered resources and recycled and recyclable materials, including paper, oils, and tires;
6. Any other term to further the City's and the public interest.

C. Terms and Conditions Applicable to Construction Contracts

In cases where the contract calls for work as described in ORS 701.005(2) (i.e.; construction work), the contracts shall contain:

1. Certification by the "contractor" that the contractor is registered with the Construction Contractors Board according to ORS 701.035 to 701.055, unless prohibited by federal regulations.
2. Certification by the contractor that all subcontractors performing work as described in ORS 701.005(2) will be registered with the Construction Contractors Board according to ORS 701.035 to 701.055

before the subcontractors commence work under this contractor.

D. Special Terms and Conditions.

The City may also establish special terms and conditions applicable to specified categories of contracts. Any special terms and conditions shall be included in the solicitation documents and become an integral part of those contracts.

E. Compliance and Exceptions to Terms and Conditions.

1. Bidders and proposers shall be responsible for noting the terms and conditions included applicable to each set of solicitation documents.
2. By submitting a bid or proposal, the bidder or proposer acknowledges acceptance of and the intent to abide by the terms and conditions specified in the invitation to bid or request for proposals and agrees to enter into a contract consistent with these state public contracting law requirements. Submission of a bid or proposal without objection to provisions listed in the form contract included in the solicitation documents constitutes an offer to enter into a contract on those terms and no negotiation of those terms is permitted after the contract award.
3. The City has the right to reject any bid or proposal that takes exception to specifications or to contract terms unless the right to take exception is expressly granted in the Invitation to Bid or Request for Proposals. Bids or proposals which take exception to the specifications or contract terms, or which are made contingent upon the City's acceptance of different or additional specifications or terms, may be rejected because they are not responsive to the Invitation to Bid or the Request for Proposals.
4. Any exceptions to any proposed terms and conditions must be clearly stated in writing by the bidder or proposer in the signed bid or proposal. The City reserves the right to reject or accept any bid or proposal that takes exception to the terms and conditions, but must take into account any objections in comparing the bid or proposal to other bids or proposals. Exceptions to the terms and conditions become contractual obligations only upon written acceptance by the City.

Commentary

The following is a list of federal, state, and local agencies of which the City has knowledge that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of contracts:

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Federal Agencies:

Agriculture, Department of Forest Service
Soil Conservation Service

Defense, Department of Army Corps of Engineers

Energy, Department of Federal Energy Regulatory Commission
Environmental Protection Agency

Department of Health and Human Services

Housing and Urban Development, Department of Solar Energy Conservation Bank

Interior, Department of
Bureau of Sports Fisheries and Wildlife
Bureau of Outdoor Recreation
Bureau of Land Management
Bureau of Mines
Bureau of Indian Affairs
Bureau of Reclamation
Geological Survey
Minerals Management Service

Labor, Department of
Mine Safety and Health Administration
Occupational Safety and Health Administration

Transportation, Department of
Coast Guard
Federal Highway Administration

Water Resources Council

State Agencies:

Administrative Services, Department of
Agriculture, Department of
Columbia River Gorge Commission
Consumer & Business Services, Department of Oregon Occupational Safety & Health
Division
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of

Human Resources, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
Soil and Water Conservation Commission
State Engineer
State Land Board
Water Resources Board

Local Agencies:
City Council
County Court
County Commissioners, Board of
Port Districts
County Service Districts
Sanitary Districts
Water Districts
Fire Protection Districts

30.180 Availability of Award Decisions – Contract Retention

A. Contract Documents.

A signed purchase order, agreement, or contract, as applicable, shall be executed with the person to whom the contract is awarded.

B. Notification to Unsuccessful Bidders.

Unsuccessful bidders and proposers will be provided with the notice of award. Tabulations of awarded bids may be obtained for a nominal charge in person or by submitting to the City a written request stating the bid number and a self-addressed, stamped envelope.

C. Availability of Files.

Completed files, other than confidential materials, shall be available for public review at the City.

D. Copies from Files.

Copies of material from files, other than previously described tabulation sheets, may be obtained upon payment of a reasonable copying charge.

E. Contract Retention.

The following requirements on retention of contract documents after award shall apply:

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1. For all service contracts the original must be kept for six (6) years after the contract has been completely executed;
2. Capital improvement contracts must be kept a minimum of ~~ten (10)~~ years after substantial completion;
3. Goods contracts must be kept for six (6) years after maturity;
4. Intergovernmental and interagency agreements must be kept a minimum of ~~ten (10)~~ years after substantial completion; and
5. Other purchasing related documents should be retained according to City retention schedules;

30.185 Requests for Proposals

- A. The City may use the request for proposal process for any contract for which price is not the sole factor for awarding the contract. When the City uses a request for proposal, in addition to those items listed in 30.025, which are applicable, ~~the solicitation document request for proposals shall state:~~

- ~~1. The necessary contract terms;~~ 1. The necessary contract terms;
2. The evaluation criteria to be applied in awarding the contract and the role of an evaluation committee, if any;
3. The criteria for awarding the contract, which may include but are not limited to cost, quality, service, experience, expertise, compatibility, product reliability, operating efficiency, and expansion potential.
4. Complaint processes and remedies available.
5. The provisions made for vendors to comment on any specifications that they believe limit competition.
6. The location where sealed written proposals are to be submitted and the date and deadline for submittal.

~~7. The work must meet the highest standards prevalent in the industry.~~

- B. All requests for proposals shall be published at least once in a newspaper, journal, trade publication or similar periodical. In deciding where to advertise, the

City shall consider what publication is most likely to be read by qualified proposers.

- C. The City may establish an ad hoc proposal review committee to evaluate any proposal and may provide for an interview of selected proposers as part of the evaluation process. Any use of a proposal review committee or interview process shall be detailed in the request for proposals.

30.190 Performance, and Payment, and Warranty Security

A. Public Improvements Contract.

Except in emergencies, when the requirement may be waived, or unless the requirement is exempted under these rules, all persons entering into public improvements contracts with the City will be required to provide:

1. A performance bond in a sum equal to the contract price, and
2. A payment bond in a sum equal to the contract price.
3. Proof that a public works bond with a corporate surety in the amount of \$30,000 has been filed with the Construction Contractors Board for contracts subject to Prevailing Wage Rate Laws.
4. A warranty bond.

Public improvement contracts of \$100,000 or less are exempt from the bond requirements, except for contracts for highways, bridges and other transportation projects with a value of more than \$50,000?

B. Other Public Contracts.

The City may require performance security for other public contracts. Such requirements shall be stated in the solicitation documents.

C. Contracts Under \$10,000.

Performance bonds for a contract under \$10,000 shall be utilized only in critical circumstances, so as not to discourage competition.

D. Requirement for Surety Bond.

A surety bond furnished by a surety company authorized to do business in Oregon is the only acceptable form of performance security unless otherwise specified in the solicitation documents.

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E. Time for Submission.

Upon request by the City, the apparent successful bidder or proposer must furnish the required performance bond within ten (10) days of contract award. Prompt submittal of the performance bond is required to ensure timely project initiation. Failure to furnish the bond prior to the deadline shall result in rejection of the bid or proposal, forfeiture of bid security, and award to the next lowest responsible bidder or next highest-scoring proposer.

F. Claims on Payments Bonds

Claims on payment bonds shall comply with ORS 279C.600 to 279C.625 and Section 40.060.

30.195 Right to Audit Records

A. Records Maintenance; Access.

Contractors and subcontractors shall maintain all fiscal records relating to public contracts in accordance with generally accepted accounting principles. In addition, contractors and subcontractors shall maintain any other records necessary to clearly document (i) their performance and (ii) any claims arising from or relating to their performance under a public contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a public contract accessible to the City at reasonable times and places, regardless whether litigation has been filed as to such claims.

B. Audit of Cost or Pricing Data.

The City may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data according to the terms of a contract to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

C. Contract Audit

The City shall be entitled to inspect, examine, copy, and audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, or until the conclusion of any audit, controversy or litigation arising out of or related to the contract,

whichever date is later, unless a shorter period is otherwise authorized in writing.

30.200 Right to Inspect Plant

A. Time for Inspection.

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded.

B. Access to Plant or Place of Business.

As a condition of bidding, bidders agree that the City may enter a contractor's or subcontractor's plant or place of business during normal business hours for the following purposes:

1. Inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the bid; or
2. Investigate in connection with a bidder's application, a minority business certification, or bidder disqualification.

C. Contractual Provisions.

Contracts may provide that the City may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to the solicitation documents, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the contract.

E. Procedures for Trial Use and Testing.

The City may establish operational procedures governing the testing and trial use of equipment, materials, and the application of resulting information and data to specifications or procurements.

F. Conduct of Inspections.

1. Inspectors.

Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No change of any provision of the specifications or the contract may be required by the inspector without written authorization of the City, unless otherwise specified in the solicitation documents. The presence or absence of an

inspector shall not relieve the contractor or subcontractor from any requirement of the contract.

2. Location.

When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3. Time of Testing or Inspection.

Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times during normal business hours.

G. Inspection of Construction Projects.

On-site inspection of construction shall be performed in accordance with the terms of the contract.

30.205 Contract Cancellation and Termination Procedures

- A. A contract may be canceled by the City for any violation of the provisions of the contract or for violation of the certification of non-discrimination against minority, women, and emerging small business enterprises.
- B. The City may terminate any contract if insufficient funds are appropriated to complete the contract.
- C. No cancellation of a public contract shall, unless limited by the terms of the particular contract, restrict or abrogate any other remedy available to the City that is provided either by law or under the particular contract.
- D. The City shall provide the contractor written notice of the grounds for cancellation or termination and of its intention to cancel the contract or terminate the contractor's performance. If the contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of contract cancellation or contractor termination. The notice shall include the effective date of the intended cancellation or termination, the grounds for cancellation or termination and notice of the amount of time (if any) in which the City will permit the contractor to correct the failure to perform. The public contract may provide contract cancellation or contractor termination procedures that are different from or in addition to, those provided in this rule.

- E. If the contractor has provided a performance and payment bond, the City may afford the contractor's surety the opportunity, upon the surety's receipt of a contractor termination notice, to provide a substitute contractor to complete performance of the contract. Performance by the substitute contractor shall be rendered pursuant to all material provisions of the original contract, including the provisions of the performance and payment bond. Such substitute performance does not involve the award of a new public contract and shall not be subject to competitive procurement requirements.

Chapter 40 PUBLIC IMPROVEMENT CONTRACTS

40.010 Application

~~In addition to the requirements set forth in Section 30 of these rules, the following rules apply to public improvement contracts. The requirements in this Section 40 are intended to be complementary to those in Section 30, with the rules in Section 40 supplementing the Section 30 requirements, where necessary, as appropriate, to meet the City's needs when administering contracts for public improvements.~~

40.015 Competitive Bidding

Except as otherwise specifically permitted by these rules, public improvement contracts shall be awarded by competitive bidding. If the public improvement contract includes design aspects, the City may award the contract by a competitive proposal process.

40.020 First Tier Subcontractor Notice

The City shall comply with state statutes relating to First Tier Subcontractor disclosure. In the event of an inconsistency between the state statutes and these rules relating to First Tier Subcontractors, state law prevails.

If the public improvement contract may be for more than \$100,000, the solicitation documents must provide notice that the contractors must disclose first-tier subcontractors who will furnish labor or materials greater than five percent of the total bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total bid within four working hours after the deadline for bid submission. The disclosure must state the name of each subcontractor and the category of work the subcontractor will perform.

40.025 First Tier Subcontractor Disclosure

- A. Bidders for public improvement contracts with a value of more than \$100,000 must submit a first-tier contractor disclosure sheet within two (2) hours of the deadline for submitting a bid. The disclosure sheet must list all first-tier subcontractors who will furnish labor or materials greater than five percent of the total bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total bid. The disclosure must state the name of each subcontractor, the category of work the subcontractor will perform and the dollar value of each subcontract. If no first-tier subcontractor meets the threshold level for disclosure and the bid price is more than \$100,000, the disclosure sheet must still be submitted with the information that no subcontractors meet the threshold level for disclosure.
- B. Bid and proposals for public improvement contracts with a value of greater than \$100,000 for which a first-tier subcontractor disclosure is not submitted within two (2) hours of the submittal deadline shall be considered non-responsive.
- C. The closing for submission of bids subject to first-tier subcontractor disclosure shall be on Tuesday, Wednesday or Thursday between 2 and 5 pm.
- D. First tier subcontractors may be substituted if only in compliance with ORS 279C.585.
- E. The City may require first-tier subcontractor disclosure in any invitation to bid, even if disclosure is not otherwise required by statute or these rules.

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40.030 Bid Evaluation and Award

A. General.

Unless exempted by these rules, a public improvement contract, if awarded, is to be awarded to the lowest, responsive and responsible bidder.

B. Special Requirements.

The solicitation documents shall set forth any special requirements and criteria, which will be used to determine the lowest, responsive and responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the solicitation documents or City regulation.

C. Bid Evaluation and Award.

The evaluation format for competitive bid pricing can be lump sum, unit price, or a combination of the two.

1. Lump sum. If the bid form includes a lump sum base bid, plus additive or deductive alternates, the total bid price, for the purpose of comparing bids, shall be the total sum computed from adding or deducting alternates, as selected by the City, to the base bid. If the alternates, or if the City has selected no additive or deductive alternates for award, bids shall be compared on the basis of lump sum prices, or lump sum base bid prices, as applicable.

2. Unit Price. If the bid includes unit prices and extensions for estimated quantities, the total bid price, for the purpose of comparing bids, will be the total sum computed from multiplying the bidder, with due adjustments being made for additive or deductive alternates, if any, selected for award. Note: In case of a conflict between a unit price and the corresponding extended amount, the unit price shall govern.

3. Combination lump sum and unit price. The City shall select a combination of factors for purposes of bid evaluation and contract award and use the methods described in (a) and (b) to compute and compare bids.

D. Proposal Evaluation and Award.

If a selection method other than competitive bids is authorized by these rules for a public improvement, proposals will be evaluated to determine which proposer offers the best solution to the City in accordance with the evaluation criteria set forth in the solicitation documents and in the City's rules. The solicitation evaluation criteria may include, but are not limited to, cost, quality, relevant experience, service, performance history on other private and public contracts, experience and availability of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, and references. Evaluation factors need not be precise predictors of actual future costs and performance, but, to the extent possible, such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;
2. Treat all proposals equitably;
3. Recognize that public policy requires acquisitions and public improvements to be accomplished at the least cost.

~~EE.~~ No assignment or transfer of contract rights.

A contractor shall not assign, sell, or transfer rights, nor delegate responsibilities under a public improvement contract either in whole or in part, without first obtaining the City's prior written consent. Such written consent shall not relieve a contractor of any obligations under a public improvement contract, and any transferee shall be considered

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the agent of the contractor and ~~bound~~ bound to abide by all provisions of the public improvement contract. Except in the event of a novation, if the City consents in writing to an assignment, sale, or transfer of the contractor's rights and responsibilities, the contractor shall remain ultimately liable to the City for complete performance of the public improvement contract as if on such assignment, sale, or transfer had occurred.

40.035 Contract Cancellation Procedures

A. ~~Termination Due to Circumstances Beyond the Control of the Contractor~~ Due to Circumstances Beyond the Control of the Contractor

1. ~~Reasons for Termination.~~ The City may, in its sole discretion, by written order or upon request from the contractor, terminate the contract or a portion thereof if any of the following occur:

~~The City may, in its sole discretion, by written order or upon written request from the contractor, terminate the contract or a portion thereof if any of the following occur:~~

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a. The contractor is prevented from completing the work for reasons beyond the control of the City;

b. Completion of the project is beyond the control of the contractor;

c. ~~For~~ Or for any reason considered by the City to be in the public interest (other than a labor dispute or reason of any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute). These reasons may include, but are not necessarily limited to ~~non-availability of funds~~, non-availability of materials, phenomenon of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional or state acts related to funding;

d. Any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute; and

eg. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works.

~~g. The City does not have funds budgeted or available to complete the contract.~~

h. Any other reason allowed as a basis for termination under the contract.

2. Payment When Contract is Terminated.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual items of work completed under the contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

3. Responsibility for Completed Work if Contract Terminated.

Termination of the contract or a portion thereof shall not relieve the contractor of responsibility for the work completed, nor shall it relieve the surety of its obligation for any claims arising from the work performed.

B. Termination of Contract for Default

1. Declaration of Default.

The City may, after giving the contractor or the surety seven (7) days' written notice and an opportunity to cure deficient performance, terminate the contractor's performance for any reasonable cause, including but not limited to those set forth in ~~subsection 2(a)(1) to (6)~~ of this rule. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the contractor has received partial payment. The agency may finish the work by whatever method it may deem expedient.

a. If the contractor should persistently or repeatedly refuse to or fail to supply an adequate number of properly skilled workers or proper materials for the efficient execution of the project; or

b. If the contractor should fail to make prompt payment to subcontractors for material or labor, or persistently disregard laws, ordinances, or the instruction of the City, or otherwise be guilty of a substantial violation of any provision of the contract; or

c. If the Contractor should voluntarily or involuntarily seek protection under the U.S. Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the contract within a reasonable time; or

d. If the contractor should make a general assignment for the benefit of the contractor's creditors; or

e. If a receiver should be appointed on account of the contractor's insolvency; or

- f. If the contractor is otherwise in material breach of any part of the contract.

2. Required Response to Declaration of Default.

If the above action is taken, the contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools, and appliances located on the premises, as well as all other materials whether on the premises or not, on which contractor has received any progress payment. Further, the contractor shall not be entitled to receive any further payment until the work is completed. On the completion of the work, determination shall be made by the City of the total amount under the terms of the contract, had the contractor completed the work. If the difference between said total amount and the sum of all amounts previously paid to the contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by the City in completing the work, including expense for additional managerial and administrative services, such excess will be paid to the contractor, with the consent of the surety. If, instead, the expense incurred by the City exceeds the unpaid balance, the amount of the excess shall be paid to the City by the contractor or the surety.

3. Expense of Completion.

The expense incurred by the City shall be as determined and certified by the City.

4. Substitution of Contractor.

As provided in PCR 30.205, termination of the contractor and substitution of another contractor to complete the work does not constitute the award of a new public contract and shall not be subject to the provisions of ORS 279.005 to 279.111.

5. Refusal to Perform.

In addition to and apart from the above-mentioned right of the City to terminate the employment of the contractor, the contract may be canceled by the City for any willful failure or refusal on the part of the contractor to perform faithfully the contract according to all of its terms and conditions; however, in such event neither the contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the contractor's breach of contract.

6. Remedies are Cumulative.

The City may, at its discretion, avail itself of any or all of the above rights or remedies without prejudice or preclude the City from subsequently invoking any

other right or remedy set forth above or elsewhere in the contract.

40.040 Retainage

A. Retainage of Five Percent.

The City will retain amounts from progress payments so that the total value of all amounts retained will not exceed 5 percent of the value of completed work. If the contract work is 50 percent completed and the work is progressing satisfactorily, the retainage may be reduced on the remaining progress payments. Any reduction or elimination of retainage shall be allowed only upon written application of the contractor, which application shall include written approval of the contractor's surety; except that when the contract work is 97-1/2 percent completed, the City may without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. If retainage has been reduced or eliminated, the City reserves the right in protecting its interests to reinstate at any time retainage from further progress payments.

B. Alternatives to Cash Retainage.

In lieu of cash retainage to be held by the City, the contractor may select one of the following options:

1. Deposit of Securities.

The contractor may deposit bonds or securities with the City or in any bank or trust company to be held for the benefit of the City. In such event, the City shall reduce the retainage in an amount equal to the value of the bonds and securities. This reduction in retainage will be made in the progress payments made subsequent to the time the contractor deposits the bonds and securities.

The value of the bonds and securities will be determined periodically by the City and the amount retained on progress payments will be adjusted accordingly. The bonds and securities deposited by the contractor shall be fully assigned to the City or be payable to the City on demand and shall be of a character approved by the Finance Director, including but not limited to the following:

- a. Bills, certificates, notes or bonds of the United States.
- b. Other obligations of the United States or its agencies.
- c. Obligations of any corporation wholly owned by the Federal Government.
- d. Indebtedness of the Federal National Mortgage Association.

ef. Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.

fg. Corporation bonds rated A or better by a recognized rating service.

gh. General obligation bonds of the State of Oregon or any political subdivision thereof.

hi. General obligation improvement warrants issued pursuant to ORS 287.502.

ij. Irrevocable letters of credit from a bank doing business in Oregon.

At the time the City determines that all requirements for the protection of the City's interest has been fulfilled, all bonds and securities deposited as above provided will be released to the contractor.

2. Deposit in Interest-Bearing Accounts.

Upon written request of the contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association for the benefit of the City. Interest earned on such account shall accrue to the contractor.

3. The City may, at its discretion, allow the contractor to deposit a surety bond in a form acceptable to the City in lieu of all or a portion of funds retained or to be retained. The contractor shall accept like bonds from subcontractors and suppliers when the City allows surety bonds for retainage.

C. Recovery of Costs.

If the City incurs additional costs as a result of the exercise of any of the options for retainage described herein, the City may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the City shall, upon request, inform the contractor of all accrued costs.

40.045 Progress Payments

A. Request for Progress Payments.

At a regular time each month, the contractor shall, if required by the contract documents, submit to the City a request for payment based upon an estimate of the amount of work

completed and of the value of acceptable material to be incorporated in the completed work which has been delivered and acceptably stored. Upon verification and approval of the City, the sum of these values will be referred to the "value of completed work." With these estimates as a base, a progress payment will be made to the contractor, which shall be equal to the value of completed work, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the City for any cause, and less an amount to be retained in protection of the City's interests.

B. Progress Payments Do Not Constitute Acceptance of Work.

Progress payments shall not be construed as an acceptance or approval of any part of the work covered thereby, and they shall in no manner relieve the contractor of responsibility for defective workmanship or material.

C. Estimates for Progress Payments.

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown therein are subject to correction in the final estimate. If the contractor uses such estimates as a basis for making payments to subcontractors, this is at the contractor's own risk, and the contractor shall bear all loss that may result.

D. Contractor Certified Payroll Payment Withholding

The City shall withhold 25% (twenty-five percent) of any amount owed to a contractor if the contractor does not file certified payroll records with the City along with any invoice for payment on any project covered by Prevailing Wage Rate Law.

40.050 Final Inspection

A. Notification of Completion.

When the contractor determines that all construction work on the project has been completed, the contractor shall so notify the City in writing. The City shall make an inspection of the project and project records within fifteen (15) days of receiving said notice. If, at such inspection, all construction provided for and ordered under the contract is complete and satisfactory to the City, and all certifications, bills, forms, and documents have been submitted properly, such inspection shall constitute the final inspection.

B. Instructions to Complete the Work.

If, however, at any inspection, any work in whole or in part is found unsatisfactory, or it is found that all certifications, bills, forms, and documents have not been submitted properly, the City shall within fifteen (15) days provide instructions to the contractor on

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outstanding requirements to complete the project. At such time as the contractor determines full compliance with, and the execution of such instructions, the contractor shall notify the City in writing. The City shall make another inspection within fifteen (15) days after such notice, and this inspection shall constitute the final inspection provided construction work has been completed satisfactorily.

C. Acknowledgment of Acceptance.

Upon satisfactory completion of all work required under the contract, the City shall acknowledge ~~final completion acceptance~~ of the work in writing.

40.055 Final Estimate and Final Payment

A. Submission of Final Estimate.

As soon as practicable after final inspection of the work under the contract, if unit prices were applicable, the City shall prepare a final estimate of the quantities of the various classes of work performed. Following a determination of the total amount due the contractor, and following final acceptance of the work by the City, final payment shall be made to the contractor.

B. Set-off of Prior Payments.

All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

C. Interest.

Beginning ~~thirty (30)~~ days after the date of final acceptance of the project by the City, the City shall pay to the contractor interest at the rate established by State statute on any money due and payable to the contractor. Interest shall also be payable on any interim payments that are more than ~~thirty (30)~~ days overdue. No interest shall be assessed against retainage or other amount lawfully withheld by the City.

40.060 Claims for Unpaid Labor or Supplies

A. Right of Action.

A person claiming to have supplied labor or materials for work on a public improvement contract led by the City for which the person has not been paid by the prime contractor or any subcontractor, has a right of action on the contractor's payment bond. This right arises if the person has not been paid in full and has given written notice of a claim within ~~one-hundred twenty (120)~~ days of last providing labor or furnishing materials, or within ~~one-hundred fifty (150)~~ days of providing labor or furnishing materials if the claim is for a required contribution to a fund of any employee benefit plan.

B. Notice of Claim.

1. To initiate a claim against the contractor's bond, a person should file a ~~Notice of c~~Claim in the form and manner attached as Exhibit A. Such notice must be given to the contractor and the City .
2. Any notice of claim should include the following information:
 - a. Name and address of the claimant;
 - b. Name of prime contractor;
 - c. Title of project and contract date;
 - d. Name of the City;
 - e. Name of bonding company (may be obtained from City); and
 - f. Name of contractor or subcontractor to whom labor or material supplied.

C. Response to Notice of Claim.

Upon receipt of such Notice of Claim, the City shall:

1. Send an acknowledgment to claimant;
2. Send a copy of the notice to the prime contractor; and
3. File a copy of the ~~N~~notice with the bonding (surety) company.

D. Referral to Surety Company.

If the contract has been completed and all funds disbursed to the prime contractor, all claims shall be referred to the surety company for resolution. The City shall not arrange for second payments directly to subcontractors or suppliers for work already paid for by the City.

E. Discretionary Payment of Claim.

If the contract is still in force, the City may pay a valid claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the contractor under the contract.

F. Liability of Claim

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If the City chooses to make a payment as provided in ~~§~~subsection E, the contractor or the contractor's surety shall not be relieved from obligation with respect to any unpaid claims.

40.065 Planning for Public Improvements

The City will prepare and file with the Commissioner of the Bureau of Labor and Industries a list of planned public improvements at least thirty (30) days before adoption of the City's budget and otherwise comply with ORS 279C.305.

40.070 Prevailing Wage Laws

Contractors shall comply with prevailing wage laws (ORS 279C.800 to 279C.870 or the Davis-Bacon Act, 40 US 3141 *et seq.*) if applicable. City shall make payments to BOLI required of local governments by state law.

Chapter 50 WAIVER OF SECURITY (BID, PERFORMANCE AND PAYMENT BONDS) (Also see PCR 30.055)

50.010 Bid Security Requirements

The City shall require bid security unless an exception under the Public Contracting Code or these rules apply. The City may, in its discretion, waive bid security requirements for contracts other than those for public improvements. In its discretion, the City may accept blanket bid bonds. The City may require proposal security bonds.

50.015 Contracts Under \$10,000

The City may, in its discretion, waive the bid security and performance bond requirements if the amount of the contract is less than \$10,000.

50.020 Emerging Small Business Contracts Under \$100,000

- A. The City may, in its discretion, waive bid security requirements and performance bond requirements when the public improvement project:
1. Has estimated direct construction costs not exceeding \$100,000;
 2. Is being undertaken through a program where the bidders are drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate of Minority, Women and Emerging Small Business; and
 3. The City has been provided funds by the legislature for the purpose of assisting Emerging Small Businesses.

- B. The City may waive bid security requirements and/or performance bond requirements under the following conditions:

1. There exists an emerging small business account or like source of funds containing an unexpended and unobligated balance;
2. The City has authority to encumber and make payments from the account; and
3. The City encumbers an amount in the account to cover the total cost of each project wherein the bid security and/or the performance bond is waived.

Chapter 60.000 PROPERTY DISPOSITION

60.010 Surplus Personal Property

- A. Personal property owned by the City and under the dollar value of \$5,000 may be disposed of with the approval of any department head or the City Manager. Personal property with a value of more than \$5,000, but less than \$25,000 may be disposed of only after being declared surplus by the City Manager. Personal property with a value greater than \$25,000 may be disposed of only with the approval of the City Council. The method of disposal will be determined based on condition, value, demand, and/or use.
- B. Personal property may be declared surplus if it is scheduled for replacement in an adopted budget or it is no longer necessary to provide City services.

60.015 Auction Sales of Personal Property

Personal property may be sold at auction if the City determines that an auction will probably result in the best net return for the City. Auctions that are widely publicized, including internet auctions, do not require notice by the City.

60.020 Sales of Personal Property

- A. When the current market value per item is estimated to be more than \$25,000, the personal property must be disposed of in a competitive process that includes at least one notice published in a local newspaper. The City at its discretion may choose between sealed written bids, a public auction, an internet auction, or some other process that allows competitive bidding. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected, and the City may negotiate a sale subject to the following conditions:

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1. An appraisal of the market value of the property is obtained and documented, and the negotiated sale price meets or exceeds the market value; or
 2. The sale amount exceeds the highest bid received through the bidding or auction process.
- B. The City may sell personal property whose value is estimated to be less than \$25,000 by any competitive means calculated to achieve the best net result to the City. The City shall endeavor to get as many quotes as is reasonable under the circumstances (normally at least three) and shall negotiate to maximize the proceeds for the City.
- C. City employees who have participated in the process of declaring goods to be surplus may not purchase or otherwise acquire surplus goods from the City. Other City employees may not purchase or otherwise acquire surplus goods until the general public has a reasonable opportunity to bid on, purchase or otherwise acquire the goods. Departments may adopt additional rules relating to the acquisition of surplus goods by City employees.

60.025 Third-Party Sales of Personal Property

The City may retain one or more agents to sell surplus personal property if the selection of the agent was conducted by a competitive request for proposal process.

60.030 Donations of Personal Property

- A. The City may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following entities:
1. Another public agency;
 2. Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or
 3. Any recognized non-profit activity that is certified to receive federal surplus property.
- B. The City may donate or sell, without competitive bids, surplus personal property to recognized private, non-profit social or health service activities, subject to the following conditions:
1. A determination has been made that the property is not needed for

other public purposes; and

2. If the property has a current market value of \$1000 or more, the donation or sale shall:

- a. Be approved by the City Manager or designee; and
- b. Be documented by the City to be clearly in the public interest.

- C. The City may give away surplus personal property to the public at no charge on a first-come, first-served basis for property that it would otherwise pay to dispose of. A City employee may take property under this provision only after it has been available to the public for a reasonable period of time (15 minutes if widely publicized in advance, one (1) working day if not publicized in advance).
- D. The City shall maintain a record of all transfers, donations, or sales authorized by sections A and B of this rule.

60.035 Trade of Personal Property

The City may trade personal property owned by the City to other government agencies or to other entities provided the following conditions apply:

- A. Trades to other government agencies must be approved by the City Manager, ~~or acting or interim City Manager personally.~~
- B. Trades of personal property with parties other than government agencies must proceed as follows:
 - 1. The market value of both the item to be traded and the item requested must be documented.
 - 2. The proposal to trade an item for another item must be made available to an adequate number of potential vendors to encourage competition.
 - 3. The trade must be approved by the City Manager.

60.040 Trade-Ins

If the City is purchasing new goods or equipment to replace existing goods or equipment and the seller accepts trade-ins, the City may trade in the old equipment in order to get a reduction in the price of the new goods without going through a competitive process for the sale of the used goods.

60.045 Disposal of Valueless Property

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The City may dispose of surplus property that has no monetary value or that has a monetary value insufficient to cover the costs of a sale by disposing of the property as waste. Property that would otherwise be disposed of as waste may be made available to the public at no charge or at a minimal charge.

Chapter 70 PERSONAL SERVICES CONTRACTS

70.010 Personal Services Contracts

- A. Personal service contracts are not subject to formal competitive process under the Oregon Public Contracting Code. This Chapter describes a method for distinguishing between personal service contracts and public contracts, particularly service contracts, and provides examples of contracts or classes of contracts which are or are not personal service contracts. It also provides procedures to be used in awarding personal services contracts.
- B. The determination whether a contract is a public contract or a personal service contract shall be based on the following:
 - 1. A personal service contract is appropriate where the contract is for services, and where the individual qualifications and skills of the person providing the service are an essential part of the service. A personal service contract is awarded primarily on the basis of the contractor's qualifications including but not limited to criteria such as experience, training, knowledge, and expertise, technical skill, creativity, artistic ability, performance history, and demonstrated ability to exercise sound professional judgment.
 - 2. A personal service contract is not appropriate where price is the major factor and quality of service is only a minor factor and can be satisfied by compliance with minimum standards.
- C. Personal service contracts may include, but are not limited to, the following:
 - 1. Contracts for services performed as an independent contractor in the professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; aerial photographer; timber cruiser; broadcaster; information technology, data analysis, advertising, or data processing consultant.
 - 2. Contracts for such services as an artist in the performing of fine arts, including but not limited to photographer, filmmaker; painter; weaver; or sculptor.

3. Contracts for services of a specialized creative and research oriented, noncommercial nature.

4. Contracts for educational and human custodial care services.

D. The following are NOT personal service contracts:

1. Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately a tangible product.

2. A service contract, including a contract with a temporary service or personnel agency, to supply labor which is of a type that can generally be done by any competent worker, e.g., data entry, key punch, janitorial, security guard, crowd management, crop spraying, laundry, and landscape maintenance service contracts

3. Contracts for trade related activities considered to be labor and material contracts.

4. Contracts for services of a trade-related activity, to accomplish routine, continuing, and necessary functions, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

5. Contracts with personnel agencies.

E. Examples of the differences between personal services contracts and other contracts include:

1. A contract to design advertising and plan an advertising campaign is a personal services contract because it involves specialized knowledge and skills, but a contract to provide standardized responses (e.g. brochures) in response to requests for information in response to an advertising campaign is not a personal services contract because it does not require professional skills.

2. A contract for legal services is a personal services contract because it involves professional skills, but a contract to publish an ordinance or code is not a personal services contract because even though some level of expertise is needed, the contract is primarily for the product, price should be a primary factor, and adequate quality can be assured by requirements or specifications in the contract.

70.015 Screening and Selection Policy for Personal Services Contracts

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It is the City's policy to select as expeditiously as possible the best qualified consultant available, consistent with financial considerations. The selection procedures in this section shall be used to select the personal services contractors, except where ORS 279C.110 requires a different procedure. The selection procedures do not apply to the appointment or hiring of City officials and employees, to employment or services contracts with City officials and employees (except if providing services outside the scope of employment or official duties), or to collective bargaining agreements.

A. Formal Selection Procedure.

This procedure shall be used for personal service contracts when the total cost of the contract exceeds \$100,000. The City may elect to use the Formal Selection Procedure for any personal service contract, regardless of price.

1. Announcement.

The City will make at least one public announcement of its need for personal services in an appropriate trade periodical and/or newspaper of general circulation. The announcement shall include a description of the requested services, the scope of the services, project completion dates if applicable, and a description of any special requirements, if present. The announcement shall invite qualified prospective contractors to indicate to the requesting department their interest in performing the services required. The announcement will specify a closing date by which the statement must be received by the appropriate department. The announcement may be sent directly to persons the City believes capable of providing the services.

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2. Application.

Prospective contractors must submit a statement which describes their capabilities, credentials, and performance data sufficient to establish their qualification for the project. The application must include information on the rates to be charged, including an estimate of total cost.

3. Initial Screening.

The Department Head or designee shall evaluate the qualifications of all applicants responding to the announcement by the closing date and select from among the respondents a number of prospective contractors whose statements evidence the highest level of qualification to be interviewed as the next stage of the selection process. The number of interviewees will normally be three, but may be more or less, depending on the relative quality of the initial submissions. Should fewer than three statements be received, then each prospective contractor submitting statements that is considered to be acceptable will be interviewed.

4. Final Selection Procedure.

a. Interviews.

The Department Head or designee will hold discussions with the finalists selected for initial screening. Applicant capability, experience, and compensation requirements shall determine the department's final selection. The interviews may be in person or by phone.

b. Award of Contracts.

The Department Head or designee shall make a recommendation to the Board for award of the contract based on the written materials and the interview evaluation. The designee may be a committee.

B. Informal Selection Procedure.

1. This procedure may be used when the estimated fee to the contractor does not exceed \$100,000.

2. The department will contact a minimum of three prospective contractors with which it has had previous successful experience or which are known or believed by the department to be qualified to offer the sought-after services. A projected fee will be requested and a selection made by the Department Head or designee based upon the consultant's capability, experience, project approach, and compensation requirements.

C. Direct Appointment Procedure.

1. A qualified consultant may be appointed directly from the City's current list of consultants, another public contracting agency's current list of consultants pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190; or from consultants offering the necessary services that the City reasonably can locate. Direct appointment procedure may be used when:

- a. The consultant's estimated fee does not exceed \$5,000; or
- b. When the project consists of work that has been substantially described, planned, or otherwise previously studied or rendered in an earlier departmental contract, provided that the original selection procedure used for the project was a formal procedure and the consultant's estimated fee does not exceed \$100,000.

2. A direct appointment shall be competitive to the extent practicable and may be based on the consultant's availability, capabilities, staffing experience, compensation requirements and the project's location.

D. Emergency Appointment Procedure.

Nothing in the rule shall be inferred to prohibit or otherwise impede the Department Head's or designee's right to make direct consultant appointments when conditions require a prompt action to protect life or property. In such instances, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted by the Department Head or designee to the City Manager or designee for action. The City Manager or designee will determine if an emergency exists, declare the emergency, and when appropriate, approve the appointment.

E. Responsible Parties' Actions.

1. Professional Consultants.

Submit qualifications, credentials, and performance data relating to their capabilities to the appropriate division in response to project announcement.

2. Division/Department.

- a. Determine that the work on a project requires the services of a consultant.
- b. Announce project as required by this section.

- c. Request the City Manager's approval of the required actions.
- d. Determine appropriate selection/appointment procedure.
- e. Select consultant/candidates as specified under this rule.
- f. Interview the top candidates and make the final selection.
- g. Execute contracts and awards to consultants, with the City Manager's prior approval.
- h. Maintain a file on the selection process, including:
 - i. The method and copy of the announcement.
 - ii. The names of firms/individuals and cost estimates considered.
 - iii. A justification of need for the contract.
 - iv. The basis for selection.
 - v. The means by which rates were established.
 - vi. How reasonableness of price was determined.
 - vii. A copy of the resulting contract.

3. City Manager

- a. Approves each project's scope and budget as necessary.
- b. Makes direct and emergency appointments as required.
- c. Approves/disapproves Personal Services Contract and all subsequent amendments unless the amount of the contract requires the Board's approval.

70.020 AMENDMENTS

Amendments for additional work on personal service contracts shall be permitted only if the City requests additional work of the same type. Any such amendment may not exceed 25% of the original contract value. If an additional personal services contract is to be awarded for work related to an existing personal service contract, the total value of the new and old contracts is to be considered in determining the type of selection procedure required. If a contract was originally awarded by the informal selection

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procedure, amendments that would result in a total contract price of more than \$100,000 are not permitted. If a contract was originally awarded by the direct appointment procedure under Section 70.015C.1.a, amendments that would result in a total contract price of more than \$10,000 are not permitted.

Chapter 80 EMERGENCY CONTRACTS; SPECIFIC EXEMPTION REQUIREMENTS; BOARD EXCEPTION; PROCEDURES; TEMPORARY EXEMPTIONS

80.010 Emergency Contracts

- A. The City Manager or designee may, at the City Manager's or designee's discretion, authorize or let public contracts without a formal competitive process if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of service, or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.
- B. The City Manager or designee must declare the existence of an emergency, which shall authorize the City to enter into an emergency contract with a price under \$50,000 and make detailed written findings describing the emergency conditions necessitating prompt execution of the contract. A copy of the findings together with the amount of the contract and the name of the contractor shall be immediately forwarded by the City Manager to the Board. The amount of an emergency contract may be increased to any amount with approval of the Board, based on a finding that it is in the public interest to continue with the contractor awarded an emergency contract rather than to go through a new process.
- C. Any contract awarded under this exemption shall be awarded within sixty (60) days following declaration of the emergency unless an extension is granted.
- D. The City may enter into a public contract without a formal competitive process when circumstances that could not reasonably be anticipated, require prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the City shall:
 - 1. To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
 - 2. Make written findings describing the circumstances that require the prompt performance of the contract and of the harm anticipated to result from failing to establish the contract on an expedited basis; and
 - 3. Record the measures taken under subsection 1 of this section to encourage competition, the amounts of the quotes or proposals obtained, if

any, and the reason for selecting the contractor.

- E. The City shall not contract pursuant to the exemption in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

Chapter 90 RECYCLABLE/RECYCLED PURCHASING GUIDELINES

90.010 Recycled Materials and Products Guidelines

The City shall make every effort to prefer, specify, and purchase recyclable items and materials with recycled content in accordance with ORS 279A.125.

Incentives for recycled materials shall be applied whenever economically feasible.

A preference of 5% shall be applied for materials and supplies manufactured from recycled materials, as provided in PCR 90.015 with the exception of recycled paper and paper products, which receive a higher preference percentage as stated in PCR 90.020.

The bidder or proposer shall indicate in its bid or proposal, the materials it considers subject to the 5% preference. The 5% preference will only apply to the value of that portion of a bid or proposal that offers products containing verifiable recycled contents. The "5% preference" shall be applied by dividing the bid amount for the recycled goods by 1.05 and using the resulting number in calculating the total bid amount.

90.015 Recycled Materials Preference

- A. All contracts will require contractors to use, in the performance of the contract work, to the maximum extent economically feasible, recycled paper.
- B. All contracts will encourage contractors to use in the performance of the contract work, to the maximum extent economically feasible, recycled PETE products, as well as other recycled plastic resin products. "Recycled PETE products" means a product containing post-consumer polyethylene terephthalate material.
- C. Solicitations will include the following language: "Contractors will use recyclable products to the maximum extent economically feasible in the performance of the contract work."
- DA. In order to qualify for a recycled materials preference, bidders and proposers, in their bids and proposals, shall certify the minimum or the exact percentage of recycled product in all materials and supplies offered and both the post-consumer and secondary waste content thereof.

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- | B. Bids that contain false information about the percentage of recycled product, post-consumer and secondary waste content, and verifiable recycled content shall be rejected as non-responsive.
- | C. Contracts awarded as a result of a preference under this rule are subject to investigation, including but not limited to, audits, plant visitations, examination of invoices and other documents, etc., as the City deems necessary to confirm that the products supplied contain the percentages of recycled product, post-consumer and secondary waste stated in the bid or proposal.
- | D. Failure to provide products containing the percentages of recycled product, post-consumer and secondary waste stated in the bid may result in:
 1. The contractor being required to reimburse the City for the portion of the contract price that is attributable to the preference; and
 2. Contract termination; or
 3. Both 1 and 2, or such other remedies the City deems appropriate.

90.020 Recycled Materials and Products Purchasing Guidelines

A. Purchase of Paper Products.

The City promotes the use of recycled paper and paper products. Purchase of recycled paper and paper products is preferred even when the cost of the recycled paper or paper products is up to seven percent (7%) higher than the cost of the same quality paper or paper products containing little or no recycled paper. "Recycled paper" shall be defined as a paper product with not less than fifty percent (50%) of its total weight consisting of secondary waste materials or twenty five percent (25%) of its total weight consisting of post-consumer waste.

1. In the specification and purchase of City high speed copier and small offset press application paper and fine printing paper including book, bond, cover, gum, index, ledger, and duplicator papers:

- | a. The City ~~shall~~ will attempt to use recycled paper wherever possible if available and compatible with existing printing and copying equipment;
- | b. The City ~~shall~~ will try to eliminate excessive or unnecessary paper use, including but not limited to over-purchase of paper, over-printing of materials, purchases of too high a grade of paper, purchase of paper which is not recyclable; and purchase of virgin paper when recycled paper is available in the same grade;

c. Procurement specifications for the purchase of new printing and copying equipment shall require the acceptance and operational use of recycled paper and shall be capable of two-sided copying;

d. The procurement of unbleached, recycled paper is encouraged and the use of bright, hard to bleach colored or otherwise non-recyclable papers shall be discouraged; and

e. In the specification and purchase of other paper items including corrugated and fiberboard boxes, folding box board and cartons, stationery, envelopes, legal and scratch pads, manifold business forms (including computer paper), toilet tissue, paper towels, facial tissue, paper napkins and industrial wipes, and brown and coarse papers, the City shall actively solicit information from vendors with regard to the availability of other paper products (as listed above) with recycled paper content and promote its use.

B. Purchase of Composted Waste Materials.

In the specification and purchase of landscape cover, soil amendment, and fill materials:

1. The City shall attempt to eliminate from procurement specifications any exclusions or barriers to the purchase of recycled compost materials except for exclusions based upon plant or human health or safety; and

2. The City shall make every efforts to utilize and specify functionally equivalent composted waste products in the place of products manufactured from virgin materials.

C. Purchase of Retread Tires.

In the specification and purchase of tires for vehicles and equipment in the City fleet:

1. The City shall review the use of~~make every reasonable effort to utilize~~ retread tires in the place of tires manufactured from virgin materials where technical requirements will allow; and

2. The City shall give preference to the purchase of retread tires to the ~~maximum extent reasonable, possible~~ within the intended use of the product taking the following into consideration:

a. The product is unable to meet the City's specifications (e.g., emergency response vehicles and heavy equipment, safety equipment);

- b. The product is not available within specified delivery schedules; and
- c. The product is not price competitive.

D. Purchase of Re-refined Petroleum Products.

In the purchase of lubricating oils for vehicles and equipment in the City fleet:

- 1. The City shall make every reasonable efforts to utilize lubricating oils with re-refined oil content unless:
 - a. The product does not meet performance specifications recommended by the original equipment manufacturer and related warranties would be voided; and
 - b. The product is found to not be economically or technically feasible.
- 2. The City shall review current procurement specifications in order to eliminate (wherever economically and technically feasible) an exclusion of lubricants refined from recycled waste materials.

E. Purchase of Building Insulation Products.

In the specification and purchase of building insulation products:

- 1. The City shall make every reasonable efforts to prefer, specify and purchase insulation products manufactured from recovered or recycled materials for maintenance and repair operations, building construction projects and work or projects which are let to private contractors; and
- 2. A decision not to purchase insulation products with the highest percentage of recovered material content shall be based upon a determination that such products:
 - a. Are not available within a reasonable period of time;
 - b. Are not available at a reasonable price; and/or
 - c. Fail to meet reasonable performance standards set forth in applicable specifications.

F. Purchase of Recyclable Plastic Products.

In the specifications and purchase of disposable food service products and bags:

1. The City shall use efforts to specify and utilize products, which are exclusively recyclable where available and locally marketed. Preference shall be given to products manufactured from materials which are readily recyclable with developed recycling markets and processes; and

2. City employees in all departments shall be encouraged to use washable beverage cups and other food services ware in the place of disposable items wherever possible. Disposable cups and utensils shall be utilized primarily for meetings and department guests.

G. Recycling/Reuse

The City shall ~~also~~ recycle or reuse materials and supplies of purchases as much as possible. Following is a listing of some basic items which shall be recycled or reused: paper, cardboard, scrap metal, tires, lubricants, and solvents, lead acid batteries, roadside brush and chipped wood waste, plastic materials, and surplus property.

90.025 Energy Efficiency

The City shall consider energy efficiency in all purchases. The City shall use life cycle cost analysis under Section 30.105 when energy efficiency of products or processes are factors in considering total cost to the City.

CHAPTER 100 INTERNAL PROCEDURES, AUTHORIZATION AND REQUIREMENTS

100.010 Expenditure Authority

A. ~~City Manager~~ A delegation of authority is provided under Municiple Code 2.30.060.

~~The City Manager may authorize contracts obligating the City to spend up to \$50,000; provided that the purchase is pursuant to an adopted budget.~~

B. ~~Department Heads~~

~~Any department head may authorize contracts obligating the City to spend up to \$10,000, provided however, if the expenditure is for goods that are for the particular use of the department heads, such as office furniture for the department head's office or computer to be used by the department head, approval of the City Manager is required.~~

C. ~~Others~~

~~Department heads may authorize employees to enter into contracts and shall establish a maximum authority for employees or classes of employees.~~

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100.020 Procedure

No employee may expend in excess of \$1,000 on a purchase of goods, services or public improvements unless the expenditure is pursuant to a written contract or city purchase order. A copy of all contracts and purchase orders shall be provided to the City's Finance Department within 3 days of execution.

100.030 Originals to City Recorder

The originals of all contracts shall be sent to and maintained by the City Recorder, with a copy sent to the Finance Department within three (3) days of execution. Each department shall keep a copy of all contracts it awards.

(Chapter 100.010 adopted by Resolution No. 3467 on May 18, 2009.)